UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1197
9 April 1997

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fiftieth session

SUMMARY RECORD OF THE 1197th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 11 March 1997, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Thirteenth and fourteenth periodic reports of Germany (continued)

[redacted]

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

CE.97-15840 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Thirteenth and fourteenth periodic reports of Germany (CERD/C/299/Add.5) (continued)

1. At the invitation of the Chairman, the members of the delegation of Germany resumed their places at the Committee table.

2. Mr. FERRERO COSTA welcomed the fact that the report had been prepared in accordance with the Committee's guidelines on the preparation of reports and that it provided important information on the implementation of the Convention. Nonetheless, Germany recognized that problems persisted in the area of racial discrimination. In its next report, it should inform the Committee on the follow-up given to the possible comprehensive anti-discrimination law. Such a law was essential in order to supplement existing legislation. At the federal level, it would be useful to set up a body for protecting human rights and combating racial discrimination. He recommended that the country should make the declaration, under article 14, paragraph 1, recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals. That would make it easier to combat racial discrimination.

3. Further information on the respective powers and responsibilities of the Länder and the Federal Government in the protection and exercise of human rights would be useful.

4. He was concerned by the presence in Germany of right-wing extremist parties. According to paragraph 57 of the report (CERD/C/299/Add.5), it was the Federal Constitutional Court alone that decided on the unconstitutionality of political parties, at the request of the Federal Parliament, the Federal Council, the Federal Government or the government of a Land. It therefore seemed that to ban those parties required the political will of the Executive. That last remark was associated with the fact that, according to paragraph 61, the German Government was giving priority to the intellectual and political confrontation with extremism and was setting its sights on public enlightenment. That attitude seemed to contradict everything that had been said in the report on the Government's action to combat racial discrimination.

5. In relation to political asylum, he wished to know from which countries the persons who could automatically obtain the right to asylum came. According to the German non-governmental organization (NGO) Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde (Association for the Protection of Civil Rights and Human Dignity), restrictions on the right of asylum in Germany had resulted in rampant racism in national institutions. He asked for further information on that subject. He also wished to know the difference in status between refugee and asylum-seeker and requested information on the naturalization process for foreigners, and particularly on the reform of the law on nationality and citizenship referred to in paragraph 85.

6. Mr. ABOUL-NASR commended Germany's efforts to implement the Convention. He would like to have further information on the situation of the more than 2 million Muslims living in Germany. Did they have mosques, school and other services on equal terms with other minorities, such as the 47,000 Jews residing in Germany?

7. Regarding article 14 of the Convention, under which a State party could at any time declare that it recognized the competence of the Committee to receive and consider individual communications, unlike other members of the Committee, he believed that such a declaration was not of great importance. The current procedures for considering individual complaints were so complicated that it was preferable for a victim of discrimination to bring his case to an NGO, which could transmit it directly to a member of the Committee. That procedure was much faster. Contrary to other members of the Committee, he did not feel it was useful to encourage Governments to make a declaration under article 14 of the Convention.

8. It was not for Governments to create human rights commissions, since such commissions, being created and financed by the central Government and composed of members it designated, would become official bodies. Such commissions should be based on the initiative of civil society.

9. Referring to paragraph 45, he asked the delegation for a copy of the law making it an offence to deny the Holocaust. He wondered whether the fact that a person stated that 3 million, and not 6 million, Jews had been exterminated in the Nazi concentration camps would constitute grounds for prosecution. The State of Israel itself had affirmed in 1949-1950 that the figure was only 4 million. Had persons who had disputed the number of Jews killed in the concentration camps been prosecuted in Germany?

10. According to paragraph 24, Germany was aware of its historical responsibility towards Sinti and Romany, many of whom had been victims of Nazi racial ideology. That was not enough. The country must take action and compensate those communities, as it had compensated the Jews. He wished to know if it was only foreigners residing in Germany who were entitled to compensation for discriminatory acts committed against them.

11. Mr. AHMADU welcomed the fact that the report had been prepared in accordance with the Committee's guidelines. Many steps had been taken to improve the implementation of the Convention, and he wished to know whether businesses and trade unions were as concerned as the Government with putting an end to racial discrimination. He noted that several ethnic minorities, including the Danish minority and the Sorbs, enjoyed a particular status which enabled them to express their culture. Was that the case of all minorities in Germany? He asked for further information on measures taken to promote tolerance. Were the Muslims who lived in Germany able to exercise their religion fully?

12. He also requested further information on the criteria applied for obtaining visas and entry permits. It would seem that nationals of former German colonies, such as Togo, the United Republic of Tanzania and Cameroon, received preferential treatment in that regard.

13. The Special Rapporteur had mentioned the example of some black Africans who had been attacked by skinheads or members of right-wing extremist organizations. The press had recently reported the case of a Gambian who had been killed under such circumstances. Apparently, Blacks were the victims of grave acts of discrimination, whether in regard to access to employment or to obtaining political asylum. Steps should be taken to protect those persons.

14. Referring to the table in paragraph 76 which showed the number of foreigners living in Germany by country of origin, he said he was surprised to see no African country on any list. The Government should take the opportunity of the next report to provide more specific information on that point.

15. More progress was needed in the implementation of the Convention, particularly with regard to making law enforcement officers and judges aware of the struggle against racial discrimination, so as to give full effect to applicable legislation.

16. Mr. YUTZIS commended the seriousness of the report and said that in addition to the specific information it contained, it enabled questions of substance to be posed, in particular thanks to surveys undertaken in Germany. To that end, he asked for further information in the next report on the criteria used to define minorities or ethnic groups. He would also like more specific information on the concrete situation of the Gypsies, concerning which he had received alarming reports from the Rom and Sinti Heidelberg bureau. He also wished to see the list of so-called "safe" countries so as to judge the degree of safety they afforded.

17. He drew the attention of the delegation and the members of the Committee to the special situation, referred to by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance, prevailing in Berlin with regard to access by ethnic minorities to housing and employment (E/CN.4/1996/72/Add.2, annex IV, para. 16). Had the heading "Foreigners: yes/no", which was a blatant and inadmissible case of discrimination been eliminated from the computerized files of the Central Employment Office? Was such a criterion also used for job-seekers in other German cities or Länder? He wished to ask a question of substance, namely, whether the attacks on the Jewish community, for example (CERD/C/299/Add.5, para. 36), were isolated instances or symptomatic of the state of affairs in German society. He also referred to the ethnic discrimination practised in daily life (E/CN.4/1996/72/Add.2, paras. 10, 11 and 13). He was particularly concerned that many xenophobic acts were committed spontaneously, which was in his view more disturbing than if they had been carried out by organized groups (CERD/C/299/Add.5, para. 110). In that connection, he cited the study conducted by Professor Heitmeyer of the University of Bielefeld (CERD/C/299/Add.5, paras. 116-118), which reported that spontaneous xenophobic violence was inspired by fears linked to the scarcity of work and housing, or by feelings that the offender's own culture was under threat.

18. In times of economic crisis, when there seemed to be no direct relationship between global economic growth and solving the unemployment problem, we was concerned about what would happen to the foreigners.

Although he acknowledged the major effort Germany was making, given the burden of history, to combat racial discrimination, he requested additional information on steps the Government was taking to combat spontaneous violence.

19. Mr. HABERLAND (Germany) stressed the important role played by the Government's integration policy. One of its major objectives was to integrate, as far as was possible, all the foreigners who had arrived in the country before 1973, and even since that date (CERD/C/299/Add.5, para. 82). Since 1 January 1991, a new law governed the legal status of foreigners: it allowed for family reunification, granting of permanent resident status, naturalization and return to Germany of those who had lived there previously. The integration policy was also aimed at guaranteeing foreigners, especially young people, concrete assistance with integration. To that end, German language courses were given in the schools so that young people could acquire vocational training and subsequently an occupation enabling them to climb the social ladder. Labour, management and the trade unions were all cooperating to facilitate access by young foreigners to the labour market.

20. With respect to the segregation of foreigners, particularly in the area of housing, he said that in many German cities, foreigners represented 25 per cent or even more of the population of some neighbourhoods and that there were "microcosms" in the large cities where foreigners, particularly Turks, had spontaneously come together. The Germans had left those neighbourhoods, but they had been replaced by other Germans. He considered that to be a positive development which the State could neither encourage or discourage.

21. However, he stressed the need to reflect on the situation of Muslims in Germany, where Islam had become the third largest religion. He estimated that there were between 2.4 million and 2.6 million Muslims, 2 million of whom were Turks. The German Constitution guaranteed freedom of religion. In Germany, there was no single Islamic organization that represented all Muslims, but there were many small groups, often constituted as associations (2,000 to 5,000, according to estimates). About 30 mosques had been built or were under construction, and there were more than 2,000 places of worship. Of the 780,000 Muslim children and adolescents, 10 per cent attended Koranic schools. Religious instruction was not regulated by the Federal State, but by the Länder: religion was taught within the framework of education in the language of the parents; by teachers from the consulate of the parents' country of origin; and in Koranic schools.

22. As to the status of minorities, he promised that more information would be provided in the next report. He nonetheless noted that the privileges granted to the Danish and Sorb minorities had troubled the members of the Committee, who had asked why other minorities did not enjoy similar privileges. He recalled that the German Constitution guaranteed the implementation of article 27 of the International Covenant on Civil and Political Rights, not only for national minorities but also for other minorities - which included, for example, naturalized Turks and Italians. The Danish and Sorb minorities were perfectly bilingual and their professional integration did not pose any problem, which was not the case of the Turkish minority, for example. For foreigners, priority must be given to learning the German language; the creation of kindergartens or schools offering education

in the language of the parents risked slowing down the process of integration of the young people. That was why steps had been taken to teach the German language to foreigners and thereby give them access to education, training and ultimately a job.

23. Foreigners and naturalized individuals could benefit from cultural assistance at the local level enabling their children to follow private courses at school in their native language. Detailed regulations had been adopted by the Conference of Ministers of Religion of the Länder. The German Government believed that its linguistic and cultural assistance was sufficient. The privileges granted to the Danes and Sorbs could be explained by historical reasons, and the German Government should not be reproached for its policy towards the Danish minority, for example - which, as Mr. Diaconu and others had recognized, was an example of good neighbourliness between national groups. The Centre for Minorities established in Flensburg, Schleswig-Holstein, should serve as a model of measures for ensuring peaceful coexistence in border regions.

24. Regarding the situation of the Angolans and Mozambicans who worked in the former German Democratic Republic, approximately 90,000 persons had been employed within the framework of the international agreements signed by the latter country on 31 December 1989 (59,000 Vietnamese, 15,000 Mozambicans and 13,000 Angolans). It had been supposed that, upon the expiration of their five-year contracts, those foreigners would wish to return to their own countries. However, on 17 December 1992, the Presidents of the Parliaments and the Ministers of the Interior of the Länder had asked for proposals enabling some of them to remain in Germany. In May 1993, an agreement had been reached to the effect that those individuals who had arrived in the former German Democratic Republic prior to June 1989 and who had had legal residence status there but who had not received any aid upon their return and who had not requested political asylum would be authorized to remain as long as, as of 17 December 1993 and, subsequently, 17 April 1994, they could prove that they had a job permitting them to earn a living. As at 31 October 1996, approximately 7,300 Angolans and 2,800 Mozambicans had been resident in Germany.

25. With regard to the Rom and Sinti, under the Schengen Agreement, which in 1995 had eliminated border controls between the member States of the European Union, Romanian and Bulgarian nationals had to obtain a visa for entry into any State member of the Union. The treaty concluded with the Romanian Government on 24 September 1992 therefore did not reflect any racial discrimination against the Rom and Sinti, but rather the application of a European provision, as Germany alone processed some 400,000 asylum requests each year, 31,000 of which were submitted by Romanians. Of that number, only 0.14 per cent were requesting political asylum. Germany and Romania had reached a practical agreement allowing for the return to Romania of asylum-seekers whose requests had been denied and who no longer possessed documents proving their Romanian citizenship.

26. In 1993, the Basic Law of the Federal Republic had been amended to take into account the difficulties faced by Germany as a result of the particularly generous provisions of its legislation on the right of asylum adopted following the Second World War. In conformity with the complementary

provisions of the Dublin and Schengen Agreements according to which an asylum-seeker could submit only one request for asylum throughout the Union, an asylum request submitted by a person in transit through a "safe" third State was not admissible in Germany. "Safe" States were members of the European Union and other States parties to the Geneva Convention relating to the Status of Refugees and the European Convention for the Protection of Human Rights and Fundamental Freedoms, namely, Norway, Poland, Switzerland and the Czech Republic.

27. It should also be pointed out that most of the Romanian political asylum-seekers whose requests had been denied had been able to return to their country without suffering harassment there, which tended to confirm the fact that they were in fact economic migrants and not persons fleeing political persecution.

28. The July 1993 act called for an expedited procedure for asylum-seekers from States that did not practise political persecution or inhuman treatment, namely, Bulgaria, Poland, Romania, Czechoslovakia, Ghana and Senegal. Nationals of the former German colonies in Africa, on the other hand, henceforth had to obtain a visa in order to visit Germany.

29. With regard to the representation of minorities through political parties, the Danish community, which was not subject to the 5 per cent rule, had won two seats in the Schleswig-Holstein Parliament in 1996, and a committee for Danish questions comprising members of the Bundestag, representatives of the Danish community, the Federal State and the Land had been formed.

30. The Sorbs, who lived above all in Saxony and Brandenburg and were not subject to the 5 per cent clause, had not formed a separate political party, preferring to stand as candidates and be elected on the lists of the major parties. They had two deputies in the Bundestag.

31. The Rom and Sinti had not founded any political parties and could be elected only with difficulty, as they were quite spread out over the territory. The matter of their compensation for the persecution suffered during the Second World War posed complex practical problems which were the subject of a report by the Ministry of Finance.

32. Mrs. VOELSKOW-THIES (Germany) said that her country was making great efforts in education to see that young Germans better understood other peoples of the world. Various disciplines stressed the culture, history and religion of foreign countries in general and of the countries of origin of the immigrants in particular. School curricula also dealt with general subjects such as human rights, racism, xenophobia, sexism, democracy and the United Nations. The educational system encouraged democratic, non-hostile behaviour through various socio-educational activities, particularly vis-à-vis the presence of students of foreign origin. Many debates were held on xenophobia, multicultural coexistence, racism, minorities, National Socialism and immigration.

33. Many schools were planning to participate in the activities of the UNESCO-affiliated school network programme for international peace and understanding.

34. With regard to military personnel, training officers and young recruits were given an education that covered human rights, xenophobia and extremism. An entire structure was in place, ranging from the dissemination of internal publications to disciplinary sanctions, to combat racist or xenophobic behaviour within the armed forces.

35. Mr. GROMANN (Germany) said that, of 16,000 cases filed against police officers, only 2,000 resulted in sentences, while, statistically, 15 per cent of complaints generally led to a guilty verdict. As to the grounds for the complaints, the normal interventions of the security forces sometimes created situations that lent themselves to conflicts with citizens, and all the more with foreigners, for example when the police undertook road checks, house or body searches or alcohol tests as part of its routine operations. Without reliable evidence, it was often difficult to prove the guilt of the police. However, the officials in charge of investigating complaints against members of the security forces of law and order were independent of the police. The 1995 Conference of Ministers of the Interior of the Länder had stated that all cases should be duly investigated and that the perpetrators of violations or abuses of power or of xenophobic acts should be prosecuted. However, the majority of the Länder did not seem to support the creation of an ombudsman post to investigate complaints against the police.

36. In relation to the use by the police of racial stereotypes on computer, the Federal Government had indicated that the characterization and stereotyping of persons was necessary for purposes of identification but that sensitive data were treated confidentially. The criminal police had named a commission to conduct an investigation into the question.

37. As to police measures to combat xenophobic offences, the struggle against the extreme right was the subject of debate at all levels in the Federal Republic. Various committees of the Conference of Ministers of the Interior and the Länder police chiefs were aware of the problems. An awareness-raising campaign had been launched in 1993 and a number of agreements adopted between the 16 Länder to combat extreme right-wing activities, it being understood that each Land had its own criteria for police repression of the extreme right. Special commissions conducted investigations of xenophobic offences; the resources for the struggle had increased tenfold; and machinery had been set up for cooperation between all officials working in the field. Those steps had brought the number of such offences down from 6,336 in 1993 to 2,500 in 1995. In that same year, 41 per cent of the case files had been cleared up, as opposed to 20.2 per cent in 1992.

38. In connection with abuses of authority and xenophobic acts committed by the police against foreigners, a 1994 report prepared for the University of Munster, where high-ranking officials of the Federal Republic were trained, had concluded that such behaviour was neither isolated nor systematic. It was due in part to the tensions caused by the bad working conditions in troubled areas of large cities and to mistrust of foreigners. Structural gaps arising

from the failure to stipulate the tasks of the police vis-à-vis those of other State services were also to blame, as was the sometimes inadequate training of police officers called upon to deal with situations of conflict.

39. To solve those problems, the composition of the police forces must reflect a changing society with a growing number of foreigners (9 per cent of the population), without, however, establishing quotas. In 1993, about 240 foreigners had begun training for a police career. The police were aware of the need for an evolving organizational culture that would make it easier to manage its contacts with foreigners. Some police stations had special employees who helped the police in their relations with foreigners and acted as spokespersons with associations of foreigners.

40. In order to reduce stress among police officers, there was a rotation between police stations (every five years for top-ranking officers, every three years for other officers) as well as psychosocial monitoring of individuals. Systematic ongoing education of police officers was also of vital importance: police officers must have social skills, learn constitutional values and be acquainted with the situation and culture of minorities (study programmes in the countries of origin of certain minorities were planned). The Government was therefore aware of the need to prevent any racial discrimination within the police forces.

41. Mr. WILLERS (Germany) said he wished to respond to three issues raised by members of the Committee. First of all, the report of the International Labour Organization (ILO) on discrimination against migrant workers in Germany mentioned the existence of a wage gap between German workers and foreign workers. That gap, which was not based on different salaries being paid for work of equal value, but which had rather to do with the average inter-occupational wage, merely showed that far more foreigners than Germans held poorly paid jobs. In order to tackle the main cause of that de facto discrimination, namely, the inferior educational and vocational training of foreigners, the Government was taking steps, as explained in paragraph 158 of the report, to improve that training.

42. Secondly, the compensation act for victims of violence (which covered all acts of violence, and not just racist acts) adopted in 1976 had originally applied only to German nationals. In 1993, a particularly violent attack on the home of a family of Lebanese asylum-seekers had led the Ministry of Labour and Social Affairs to extend the scope of that law to foreigners, with retroactive effect to 1 July 1980. For its application, foreigners were divided into four categories depending on whether they were from European Union member States or from countries with which reciprocity agreements had been concluded, and on how long they had been living in the country. Only "illegal" foreigners could not receive compensation, as it was considered that through their behaviour they could help provoke the act of discrimination. He admitted that that notion was questionable, but it had to be said that the notion of legal residence for purposes of the application of the Act was rather broad, as it covered both those with a residence permit and asylum-seekers, even those whose appeals had been rejected but whose presence was tolerated for humanitarian reasons.

43. To Mr. Yutzis' question about why job-seekers were asked whether they were foreigners, he said it was simply because the employer had to know whether those concerned needed a work permit. He did not think the measure could be regarded as discriminatory.

44. Mr. WECKERLING (Germany), replying to the question about the different criteria applied to the banning of associations and political parties, said that, under the Basic Law, parties played a crucial role in democracy. Throughout the history of the Federal Republic of Germany, the only parties to have been banned were one of the extreme right and one of the extreme left, in 1952 and 1958, respectively. The Government had also decided more recently to ban an extreme right-wing organization which presented itself as a party but which the Constitutional Court had not considered to be a genuine party wishing to take part in the democratic process. The parties referred to in paragraph 41 of the report played a completely marginal role in Germany, and to ban them would be to give them an importance they did not possess. What was dangerous was the extreme right-wing organizations that often operated in secret, and the Constitutional Court had issued a number of bans against such groups.

45. Mrs. VOELSKOW-THIES (Germany), returning to the question of the enactment of a law against discrimination, said that about two weeks previously, Parliament had rejected a bill submitted by the Social Democrat Party on the grounds that it was not comprehensive enough. It was very difficult to draft such a law insofar as all possible cases of discrimination would have to be taken into account. The Social Democrat Party intended to amend its bill and re-submit it. There were no committees but commissioners for foreigners in Germany: 1 at the federal level, 13 in the Länder and 189 at the municipal level. Their tasks included encouraging the integration of foreigners, fostering mutual understanding and combatting xenophobia and discrimination.

46. Mr. WECKERLING (Germany) replied to three other questions raised by the Committee. As regarded legal protection granted to persons who believed they had been wronged by insurance companies, under a 1989 law, such individuals could file complaints with the labour courts or civil courts.

47. With respect to the two cases of discrimination against the Rom and Sinti minorities cited by Mr. van Boven, for the first case he referred to report E/CN.4/1996/72, in which it was discussed. For the second case, concerning the sentence handed down by the Bochum Labour Court, the judge in question had apologized, both in person and through the Council of German Judges. That case showed the extent to which both the public and the judges were sensitive to language where racism and xenophobia were concerned.

48. As to the Munich exhibition on the army, at the local level it had given rise to a virulent debate on the role played by the Wehrmacht during the Hitler dictatorship, a debate in which all political parties had participated and which had led to demonstrations by right-wing extremists. Clearly, no major political party, whether regional or other, supported neo-Nazi or right-wing extremists groups.

49. The CHAIRMAN thanked the delegation of Germany for its comprehensive and specific replies.

50. Mr. GARVALOV also thanked the delegation but regretted that one of his questions had not been answered. He wished to know how Germany defined "national minorities" and why it considered that there were two national minorities and three ethnic groups in the country (para. 8 of the report). He was still not convinced of the non-discriminatory nature of the Schengen Agreement.

51. Mr. CHIGOVERA (Country Rapporteur) thanked the delegation warmly for its candour on the question of racial discrimination, a candour which was the best means for combatting the phenomenon. Clearly, Germany was doing everything in its power to fight racial discrimination, and the criticisms or questions raised by members of the Committee were only the reflection of the generally high degree of perfection demanded. Greater protection must be granted to the national minorities, and the Committee hoped that more information would be provided on that question in the next report. What mattered was not so much to enact laws against racial discrimination as to strengthen existing legislation, for example with regard to insurance, employment and the like.

52. The CHAIRMAN, welcoming the important exchange of views that had taken place, said that the Committee had thereby concluded its consideration of the report of Germany.

53. The delegation of Germany withdrew.

The meeting rose at 1 p.m.